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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re C.T. et al., Persons Coming Under the
Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CARLOS T.,

Defendant and Appellant.

F047314

(Super. Ct. No. J54841)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Charlotte Wittig, Commissioner

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Bales-Lange, County Counsel, and Bryan Walters, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Buckley, Acting P.J., Cornell, J., and Dawson, J.

Carlos T. appeals from an order terminating his parental rights (Welf. & Inst. Code, § 366.26) to his four daughters and one son.¹ Appellant contends the court erred by finding the children likely to be adopted. On review, we will affirm.

PROCEDURAL AND FACTUAL HISTORY

In June 2002, the Tulare County Superior Court adjudged appellant's five children, who ranged in age from approximately one year to eleven years of age, dependent children and removed them from parental custody. The court previously determined the children came within its jurisdiction under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). Earlier that year, appellant and the children's mother were arrested for various drug charges, including manufacturing methamphetamine in the family home. Indeed, petitioner had an extensive criminal history of drug-related offenses and both parents had a history of drug abuse.

Despite reasonable reunification services offered to each parent, neither successfully reunified. By late summer of 2004, the court had terminated reunification services for both parents and set an initial section 366.26 permanency planning hearing for the children.

Pending the initial permanency planning hearing, the juvenile court granted respondent Tulare County Health and Human Services Agency's (agency) request to place all five children with their maternal aunt and uncle who lived out of state. In its section 366.26 report, the agency recommended the children remain with their aunt and uncle in long-term foster care. At a March 2004 hearing, the juvenile court ordered the children into long-term foster care and set a post-permanency plan review hearing for September 2004. By that time, the agency reported the children were doing exceptionally well and wanted to be adopted by their aunt and uncle who stated they "enjoyed the

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

children's presence and love them deeply." The court granted the agency's recommendation to set a new section 366.26 hearing for the children's anticipated adoption.

At the section 366.26 hearing in January 2005, the parties submitted the matter on the agency's reports which recommended that the court find the children adoptable and terminate parental rights. The court followed the agency's recommendations and terminated parental rights.

DISCUSSION

Appellant contends there was insufficient evidence to support the court's finding that his children were likely to be adopted. From his viewpoint, the children were not generally adoptable because: they formed an intact sibling group whose best interest was to remain together and several of them had experienced a number of problems in the past. Appellant also argues the only evidence the court had to reach its conclusion was the aunt and uncle's willingness to adopt the children; however, in appellant's view, this was not enough because there was no evidence that other approved families were available to adopt the five children. As discussed below, we disagree.

The issue of adoptability posed in a section 366.26 hearing focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt. (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, citing *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. (*Id.* pp. 1649-1650.)

In this case, there was substantial evidence of the children's adoptability. Each child was physically and emotionally healthy as well as developmentally on track. Academically, each child had "tried so hard" and showed improvement. Appellant's oldest child was in 8th grade and had been able to raise some of her grades to an "A." This was quite an improvement from the preceding school year when she received mostly F's and there was talk over whether she needed special education. Appellant's next child in age was in 7th grade and was earning all passing, satisfactory grades. Appellant's middle child was in 3rd grade and most recently earned one "D" and the rest A's and B's. The two youngest children were in preschool and doing well.

The three oldest children expressed a desire to be adopted. The middle child in particular was very excited about the prospect. All of the children had done very well in their aunt and uncle's home. There were no reports of behavior problems. They were described as "all well-behaved and polite children."

Appellant, however, dismisses such positive evidence regarding his children and their prospective adoptive placement by characterizing them as a sibling group which could not be separated and focusing on the children's earlier difficulties before their placement with their aunt and uncle.

Notably, appellant raised none of these concerns in the trial court where his points and their legal significance, if any, could have been litigated. By arguing them now, appellant essentially asks this court to reweigh the evidence and draw questionable inferences on conflicting evidence. This, however, is not within our appellate purview. Our power, when asked to assess the sufficiency of the evidence, begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) On this record, we conclude there was substantial evidence to support the court's finding.

In addition, we reject appellant's claim that caselaw required evidence of other approved families who were available and willing to adopt the children. According to appellant, if the likelihood of children's adoptability is premised in whole or in part on the desire of a prospective adoptive parent to adopt the children, then the agency must offer evidence of other approved families willing to adopt the children. In crafting his argument, appellant cites cases, none of which stands for such a position or involves a fact pattern similar to the present case. (*In re Asia L.* (2003) 107 Cal.App.4th 498; *In re Jayson T.* (2002) 97 Cal.App.4th 75; and *In re Jennilee T.* (1992) 3 Cal.App.4th 212.)

At most, in *In re Asia L.*, *supra*, 107 Cal.App.4th at page 512, the appellate court noted there was no evidence of any approved families willing to adopt the children involved. However, appellant ignores the lack of any holding requiring such proof as well as the underlying circumstances in *In re Asia L.*, *supra*, and its dissimilarity to the present case.

In *In re Asia L.*, *supra*, 107 Cal.App.4th 498, the dependent children had emotional and behavioral problems serious enough to make them difficult to place for adoption (§ 366.26, subd. (c)(3)). Notably, they were not in an adoptive placement. At best, their foster parents were willing to "explore the option of adoption." (*In re Asia L.*, *supra*, 107 Cal.App.4th at p. 512.) The *Asia L.* court considered such evidence "too vague" to support an adoptability finding. (*Ibid.*)

Were we to extrapolate a rule from the *In re Asia L.*, *supra*, decision, it might be that when there is no evidence that a child is generally adoptable and the child is not in an adoptive placement or there is no favorable preliminary assessment of a prospective adoptive parent, then the correctness of an adoptability finding may depend on evidence of approved families willing to adopt such a child. However, we fail to see that either this opinion or any of the other cited decisions stands for the proposition appellant endorses. More importantly, the types of situation posed in *In re Asia L.*, *supra*, bears no resemblance to this case.

Even assuming appellant's children were not generally adoptable, they were nevertheless in an adoptive placement. They had been in that placement with their aunt and uncle for almost one year. Their relatives were "committed" to adopting all five children. Further, their assessment as prospective adoptive parents addressed each of the statutory factors relating to their eligibility and commitment to adoption in a favorable manner. (§ 366.21, subd. (g).)

Finally, we would agree with the following observation from *Jayson T.*, *supra*, 97 Cal.App.4th at page 85, one of the other opinions appellant relies upon.

"[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the only indications are that, if matters continue, the child will be adopted into that home, adoptability is established. In such a case, the literal language of the statute is satisfied, because 'it is likely' that that particular child will be adopted."

For all the reasons stated above, we conclude the juvenile court could properly find it likely the children would be adopted.

DISPOSITION

The order terminating parental rights is affirmed.